

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6728 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARILAL NAVALSHANKER UPADHYAYA

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR PV HATHI for Petitioner

MR ND GOHEL for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/09/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, a retired Ayurvedic Vaidya, filed this petition before this Court challenging therein the Circular dated 8.6.82 of the respondent wherein they have sought to effect recovery of the amount from the petitioner by treating him to be unqualified Vaidya and disentitling him to the pay scale of qualified Vaidya.

2. The facts which are necessary for deciding this petition are to be taken briefly:

The petitioner was born on 22nd February 1918. He obtained Ayurved Vaidya Visharad from Delhi in 1961 and M.P.H. (Homeopathy) from Jullandher city. He had to his credit, Vaidyacharya from Bhavnagar Ayurved Vidyapith. The petitioner joined District Local Board, Rajkot on 27th May 1960, prior to coming into force of the Panchayat Act, 1963. On 1.4.63, the petitioner joined District Panchayat, Rajkot and he was treated as qualified Vaidya and was given the pay scale prescribed for qualified Vaidya. On attaining the age of superannuation, the petitioner retired from the services on 29.2.76. At that time he was getting pay in the pay scale of Rs.250-480 which was pay scale prescribed for qualified Vaidya. At that time, the pay scale of unqualified Vaidya was Rs.135-250. The petitioner filed this petition before this Court on 29.2.86 as his pension was not fixed. This writ petition has come up for admission before this Court on 31.12.86 on which date notice was issued. Then it has come up for consideration before this Court on 2nd September 1987. Rule was issued and interim relief has been made by this Court in the following terms.

Oral Order:

"Leave to produce a copy of the order dated December 29, 1986 fixing the amounts of pension and gratuity payable to the petitioner.

Rule. To be heard alongwith Special Civil Application No.1509 of 1983.

By way of interim relief, following directions are given to respondents Nos.1 and 2:

- 1) The respondents shall pay to the petitioner monthly pension of Rs.78/- as determined in the order dated December 29, 1986.
- 2) The amount of gratuity which is withheld and the amount of Rs.16,094/- being the arrears of pension from March 1, 1976 to March 31, 1985, shall be deposited in this Court within four weeks from the date of receipt of the writ of this Court.

3) The respondents shall pay to the petitioner the arrears of pension payable to the petitioner from March 31, 1985, upto date within four weeks from the date of receipt of the writ of this Court.

4) The respondents shall pay to the petitioner regularly every month amount of pension of Rs.78/- on or before 5th of every month.

On the amount as directed in clause (2) above being deposited in this Court, the Registrar shall invest that amount in a Fixed Deposit in a nationalized Bank for a period of 37 months. Petitioner shall be entitled to withdraw the amount of interest due and payable on such fixed deposit every month as and when it falls due and this amount of interest shall not be refundable irrespective of the result of this petition."

In pursuance of interim relief, Rs.17,288 have been deposited by the respondent before this Court. This amount is lying in fixed deposit.

3. The respondent has come up with case that due to some mistake, the then District Ayurved Officer, Rajkot, passed an order on 28th April 1969, placing some unqualified Vaidyas including petitioner in the pay scale of Rs.80-260 with effect from 1.1.65, which was then the pay scale for qualified Vaidyas. The Government therefore made an order directing to treat all such Vaidyas as unqualified Vaidyas and to recover excess amount paid to them and consequently the D.D.O. has issued an order dated 25th November 1982 to effect recovery from all such Vaidyas.

4. The learned counsel for the petitioner contended that the petitioner has retired from services on 29th February 1976 and after more than six years of his retirement, he could not have been treated to be an unqualified Vaidya. It has next been contended that the action of the respondent to make recovery of the excess amount made to the petitioner, i.e. the difference of the pay scale for unqualified Vaidya and qualified Vaidya from 1.9.65 is highly arbitrary and unjustified.

5. On the other hand, the learned counsel for the respondent contended that it is a case of correction of mistake which has been made and as such, recovery could have been ordered to be affected. The petitioner though

retired, but as he was treated to be an unqualified Vaidya, he is entitled only for the pension to be fixed on the basis of pay which he would have drawn in the pay scale prescribed for unqualified Vaidya on the date of his retirement.

6. I have given my thoughtful considerations to the submissions made by the learned counsel for parties.

7. The petitioner has been treated to be unqualified Vaidya from 1st January 1965 and his pay was accordingly fixed. He enjoyed those benefits for all these years without any objection and he retired on 29th February 1976. Even at the time of retirement, no objection has been raised nor was there any case of error, but the objection has been taken on 25th November 1982. A person who was treated to be a qualified Vaidya for all these years and he was allowed to be retired as qualified Vaidya, then merely on the ground of some error or mistake recovery cannot be made of the alleged excess amount. Even if it is taken to be a case of error, though the learned counsel for the petitioner contended that the petitioner was a qualified Vaidya, then too, it has to be corrected within a reasonable time while the petitioner was in service. The pension of the petitioner has to be fixed on the basis of the last pay drawn, i.e. the pay which he was drawing on 29th February 1976. It is true that a mistake can be corrected but if it is really a case of mistake then the powers for correction thereof should be exercised within a reasonable time. The petitioner has been given the pay scale of qualified Vaidya from 1.1.65. It is true that this pay scale was given to the petitioner from retrospective effect but that pay scale was given to him in the year 1969. After more than 13 years, the respondent stated that he was erroneously given pay scale of trained Vaidya. Not only this even after retirement of petitioner, nothing has been stated to the effect that any error has been committed. After about six years of his retirement the correction is sought to be made. Though the counsel for the petitioner made submission that the petitioner was a qualified Vaidya, I do not consider it to appropriate to decide this question in this petition as I am satisfied that the action taken by the respondents in the present case after a lapse of so many years is highly arbitrary and unjustified. The petitioner has been treated to be a qualified Vaidya for all these years by the respondent. Not only this, but the principles of natural justice have also not been followed before making of the order against the petitioner.

8. In the result, this Special Civil Application is allowed and the respondents are hereby directed to treat the petitioner as qualified Vaidya and it is further directed to determine pension of the petitioner on the basis of last pay drawn by him on the date of his retirement. All retirementary benefits should be determined by the respondents within three months from the date of receipt of certified copy of this order and the arrears thereof be paid to the petitioner, if any, within a period of two months next thereafter. The amount of gratuity and arrears of pension which has been deposited by the respondent in compliance of the order of this Court, shall be paid to the petitioner forthwith. The aforesaid amount shall be liable to be deducted from the amount of arrears found payable to the petitioner. Rule is made absolute in aforesaid terms. The respondent is also directed to pay Rs.1,000/- by way of costs of this petition to the petitioner.

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(sunil)